IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15578 of 2003
with
SPECIAL CIVIL APPLICATION Nos. 16976, 16978, 16979, 16980,16981,17084, 17087, 17090, 17094, 17096 and 17097 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IMRAN ALI RAJABHAI POLARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15578 of 2003
MR MUKUL SINHA for Petitioner No. 1
MR DIPEN A DESAI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 17/01/2004

COMMON CAV JUDGEMENT

Since these petitions involve common questions of law and facts, the petitions were heard together and are being disposed of by this common judgment.

2. These petitions under Article 226 of the Constitution are filed by minors, aged about 17 years,

represented by their respective fathers or other natural guardians, for challenging the separate orders dated 25.9.2003 passed by the Director, Developing Caste Welfare Department, Gujarat State (hereinafter referred to as "the Director") cancelling the certificates issued by the District Social Welfare Officer, Palanpur in the year 1995 by which the petitioners were earlier recognized as belonging to the caste called "Muslim Julaya" which was recognized by Justice Bakshi Commission as a Socially & Educationally Backward Caste.

3. The facts leading to filing of these petitions are as under :-

3.1 When the process of granting admissions to the medical and engineering colleges and other professional courses regulated by the Joint Admission Committee commenced in May/June, 2003, the petitioners herein produced the certificates issued by the District Social Welfare Officer (Developing Caste), Palanpur in the year 1995 that the petitioners belonged to the Muslim Julaya community which is a recognized SEBC community. The petitioners had accordingly staked their claim for getting admissions to seats reserved for SEBC. The Joint Admission Committee by their letter dated 12.6.2003 referred the certificates to the Director with a request to verify the correctness of the certificates. Accordingly, by Office Order dated 17.6.2003, the Director constituted the Scrutiny Committee for verifying the certificates. The Committee prima facie found the certificates in favour of the petitioners as doubtful and, therefore, by his letter dated 1.9.2003 the Director called upon the petitioners to remain present before the Director on 9.9.2003.

3.2 The petitioners alongwith their respective fathers/guardians remained present before the Director and produced various documents in support of their claim. In most of the cases, the documents relied upon by the petitioners were as under :-

(i) The petitioners' School Leaving Certificates.

(ii) The caste certificate issued by the District Social Welfare Officer, Palanpur.

(iii) The petitioners' fathers' School Leaving Certificates.

(iv) Family tree.

(v) The certificates issued by the Kanodar Momin Juni Jamat (Kanodar Momin Old Caste).

(vi) Certificates issued by the Sarpanch, Kanodar.

(vii) Certificates issued by the Member of Legislative Assembly.

(viii) Certificates issued by the Member of Parliament.

The petitioners contended that "Julaya" means "weaver" and also produced evidence to show that their parents or grandparents were engaged in the business of weaving.

3.3 The Director found that while the petitioners' caste was shown as Muslim Julaya in the petitioners' School Leaving Certificates, the School Leaving Certificates for the petitioners' fathers did not indicate the fathers' caste as Muslim Julaya, but the caste was shown as "Islam Momin". The Director held that Muslim Julaya was declared as an SEBC community in the year 1978 with effect from 1.4.1978, but the petitioners did not produce any evidence to show that their community was known as Muslim Julaya prior to 1.4.1978. Since all the documents showing the petitioners' caste as Muslim Julaya were issued after 1978, the Director held that the petitioners did not belong to Muslim Julaya community, but after Muslim Julaya was declared as an SEBC by Justice Bakshi Commission in 1978, the petitioners and their parents had obtained the certificates showing them as Muslim Julayas. The Director heavily relied on the decision of the Hon'ble Supreme Court in Kum. Madhuri Patil vs. State of Maharashtra, 1994 (6) SCC 241 and quoted in extenso several observations made in the said judgment. Many of those observations pertained to false social status certificates obtained by candidates for wrongly gaining admissions to educational institutions or appointment to public service. The observations also referred to ineligible or spurious persons who falsely gained entry to educational institutions or public service in this manner. Ultimately, the Director held that the evidence produced by the petitioners did not prove that the petitioners belong to Muslim Julaya community and, therefore, the caste certificates were

issued by the District Social Welfare Officer, Palanpur without application of mind and independent inquiry and were issued mechanically. Accordingly, the Director cancelled the certificates issued by the District Social Welfare Officer, Palanpur in favour of these twelve petitioners in the year 1995.

Aggrieved by the aforesaid decision, the petitioners filed the present petitions on 3.11.2003 and thereafter this Court issued notice to the respondents i.e. the State of Gujarat, the Director, Developing Caste Welfare Department and the Joint Admission Committee.

4. In the memo of the petitions, the petitioners have averred and submitted as under :-

4.1 The petitioners have referred to the extracts from the report of Justice Bakshi Commission pertaining to Julayas to the effect that Julayas are Muslims and their original occupation is that of weavers. Because of the introduction of various machine-produced textiles, there has been unemployment amongst the Julayas and many of them are compelled to resort to other work. They are economically poor and their monthly income ranges from about Rs.100 to Rs.125 per family. They stay in small tenements and huts and stay in Muslim locality almost as a group. Formerly, the occupation of weavers was practiced by members of the Scheduled Caste and this occupation was akin to that of Vankars. Their social status is, therefore, considered low.

4.2 The petitioners further stated that the petitioners hail from village Kanodar situated in Palanpur Taluka of Banaskantha District. At present, the total population of Kanodar village is about 12,000 of which around 50% belong to the Muslim community. The Muslim community of Kanodar village is a single closed community practicing the occupation of weaving since time immemorial. They all belong to Shia Mazhab and were converted to Islam sometime around 400 years back. The entire population of Kanodar village is Kabirpanthi. The culture and language of the Muslim community of Kanodar village is closely linked with the local Hindus and all of them speak the local Gujarati language and none of them have any proficiency in Hindi or Urdu. The ladies of this community wear sarees. The living standard, culture, etc. of the Muslims living in Kanodar are quite different from all other Muslims living in surrounding villages who are predominantly Sunni Muslims. The Muslim community of Kanodar village is generally referred as "Momin" or "Momum" which generally means a believer and

synonymous with the word "Muslim". As the Muslim faith has no caste system, no group is identified by caste or sub-caste name, though specific groups may be identified by their occupation like Pinjari (cotton beaters), Kasai/Kasab/Qureshi (Butcher), Julaha/Momin/Ansari (Weaver), Hazam (Barbar), Ghanchi (oil trader) etc.

4.3 The petitioners' explanation for non-mention of the name "Muslim Julahas" or "Muslim Julayas" in any documents prior to 1978 is that the words "Julaha" or "Julaya" are not Gujarati words but are Urdu words and the Muslim population of Kanodar village whose mother tongue is local Gujarati, had absolutely no knowledge about the Urdu word "Julaya" / "Julaha" at all. In fact, this word is not found in any Gujarati dictionary including the authoritative "Jodni Kosh" published by Gujarat Vidhyapith. It was only after the Muslim weavers were included in the SEBC list that the Muslim population of Kanodar village came to know of the word "Julaya" which was synonymous with the word "Vankar" (i.e. weaver in Gujarati).

It is further submitted that absence of any evidence prior to 1978 cannot be fatal to the petitioners' claim and that insistence of such evidence prior to 1978 is arbitrary and irrational. The petitioners' ancestors and relatives and other members of their community in Kanodar village were engaged in the occupation of weaving and were referred to as Momin weavers covered by the entry of Julaya in the list of SEBC as Julaya Muslim weavers.

4.4 The petitioners have also referred to the Gazetteer of India published by the Government of Gujarat in the year 1981 in respect of Banaskantha District where reference is made to village Kanodar and to the weavers carrying on weaving work at a distance of 10 to 15 miles from Palanpur. The weavers are mostly Momin weavers and Harijan weavers. The petitioners have also referred to the book "People of India, Gujarat - Part II, Vol. XXII" edited by Shri KS Singh and published in the year 2003 by Popular Prakashan Pvt. Ltd., Mumbai.

4.5 The petitioner have submitted that the aforesaid evidence and the aforesaid records establish that the Momin weavers of Kanodar village are synonymous with the community of Julaha as mentioned in the list of SEBC and that all these factors and the facts regarding family history of the petitioners were considered by the competent authority, namely the District Social Welfare Officer, while issuing the certificates in the year 1995

certifying that the petitioners belong to Julaya community.

4.6 The petitioners have further stated that although they were served with the notices dated 1.9.2003 requiring the petitioners to remain present before the Director on 9.9.2003, the petitioners were not given any further time to produce any further evidence nor were they given any opportunity of oral hearing and the proceedings of 9.9.2003 were closed on the same day for final orders and the impugned orders came to be issued on 25.9.2003. Hence, the petitioners have also submitted that the petitioners were not afforded a reasonable opportunity to defend the caste certificates in their favour and the petitioners were not given sufficient time to adduce proper evidence in support of the caste certificates nor were they given any oral hearing at all and, therefore, the impugned orders are in violation of the principles of natural justice.

4.7 The petitioners have submitted that the proceedings before respondent No.2 were quasi-judicial in nature and for holding such proceedings either there should be a statutory rule or specific powers have to be conferred on specific authority to hold such proceedings. In absence of any such statutory rules or executive instructions laying down powers and procedures for reviewing or reconsidering the caste certificates issued by the competent authority, the impugned order is without authority and jurisdiction.

4.8 The petitioners have submitted that the reliance placed by the Director on the observations of the Hon'ble Supreme Court in the case of Kum. Madhuri Patil vs. State of Maharashtra (Supra) is not justified as the observations were made by the Hon'ble Supreme Court in the context of Hindu communities because Hindu social order is based on hierarchy and caste was one of the predominant facts during pre-constitution period.

5. In response to the notice issued by this Court, affidavit in reply dated 27.11.2003 came to be filed by the Deputy Director of Developing Caste Welfare Department reiterating the findings given in the impugned order dated 25.9.2003, particularly pointing out that petitioners' fathers School Leaving Certificates mention that they belong to Muslim Momin community and nowhere in the said certificates Muslim Julaya community was mentioned.

The deponent has denied the submission in the

petitions that the observations of the Hon'ble Supreme Court in Madhuri Patil's case (Supra) are confined only to Hindus. It is submitted that the observations made therein are applicable to all, whether they are Hindus or Muslims. In India, almost 90% Muslim population were originally Hindus but subsequently converted into Islam and, therefore, such communities carry with them their original socio-economic form and, therefore, the communities which have been identified as SEBC from out of the Muslim communities, are from one or the other castes. There are 27 castes of Muslims which are earmarked as SEBCs when the report was submitted on 27.2.1976. In Junagadh and Jamnagar Districts, the Muslim Julaya community was found even prior to 1.4.1978 as there were School Leaving Certificates issued prior to 1.4.1978 in the above Districts showing that the students were shown as Julaya Muslims even before 1978.

It is further stated that as per the directions given by the Hon'ble Supreme Court in the case of Indra Sawhney vs Union of India, AIR 1993 SC 474, the State Government has constituted Commission for Other Backward Classes (OBCs.) and the said Commission is considering as to which other OBCs are to be included in the list of SEBCs. The deponent of the reply affidavit has produced letter dated 19.8.2003 from the Secretary of the Commission for OBCs stating therein the castes which are under consideration of the Commission and in the said list, Momin caste is also included and, therefore, the said caste is also under consideration of the Commission for OBCs. Another letter dated 15.11.2003 from the Office of the said Commission has also been produced to show that the Momin/Muman/Moman castes are under consideration of the Commission and the Commission has also received family records of the petitioners stating that they are Momin by caste.

Further, the deponent of the reply affidavit has stated as under :-

"22. With reference to para 4(i)(3) of the petition, it is submitted that in Gujarat Momin/Muman is not synonymous to Muslim. However, Muslim community is separately identified and found. In Muslim community there are different caste and sub-caste which are identified on the basis of the occupation or profession carried on by the people since ages. It is submitted that Kanodar Momins at present are engaged in the occupation of weaving however the said occupation has been accepted by them

afterwards and the same is not the occupation of Momins since ages as its in case of bunkal/Vankar communities which are identified as S.C. It is submitted that for example in Muslim community Daudi-Vora caste which is a very rich caste only because they are engaged in leather business, they would not be included in the Chamar caste. Similarly the petitioners, only because they at present engaged in weaving, they cannot be considered as Julaya. It is further submitted that it does not come out from the record that prior to 1978 Momins were considered as Julaya. It is submitted that it seems that only after the Julaya community/caste is included is considered as Socially and Educationally Backward Class, the persons similarly situated like the petitioner have started recognizing themselves as Julayas in order to take undue advantage of the benefits available to the Julaya caste."

(emphasis supplied)

In para 24 of the reply affidavit, it is further stated that for identifying themselves as Julayas, it has to be established that they were engaged in this business since ages and it does not come out of record that Momins were actually Julayas prior to 1978 and that this factual aspect is to be ascertained and scrutinized by OBC commission.

6. The petitioners thereafter filed rejoinder reiterating the averments and submissions made in the petitions. It is denied that some students or their parents obtained false certificates to certify that they belong to SEBC. It is further stated that the reports and books referred to in the petitions could not be produced at the hearing as the petitioners did not get enough time to produce such material before the Director. The petitioners have reiterated that the petitioners' grandparents were engaged in the occupation of weaving and that Momins of Kanodar village have been engaged in the occupation of weaving since time immemorial. The petitioners have also produced with the rejoinder the share certificates issued by the Kanodar Weavers' Co-operative Industrial Society Ltd. in the year 1958 certifying that the petitioners' grandparents were members of the said Co-operative Society. The petitioners' grandparents were residing at Kanodar and were holding the shares of the face value of Rs.25/- each of the said society. The petitioners have also produced certain old documents like sale deeds executed in the

year 1961 showing that one of the petitioner's father (15578/03) was engaged in weaving and was shown as Momin. The petitioners have also produced the certificates issued by the Talati-cum-Mantri of Kanodar Gram panchayat showing the family tree.

7. At the hearing of the petitions, Dr Mukul Sinha, learned counsel for the petitioners has made the following submissions :-

7.1 The Director had no jurisdiction or authority to cancel the caste certificates issued by the District Social Welfare Officer, Palanpur showing the petitioners' caste as "Muslim Julayas".

7.2 In any view of the matter, the insistence by the Director that no Muslim student can be considered as Muslim Julaya unless his or her father's School Leaving Certificate issued before 1.4.1978 mentioned the father's caste as Muslim Julaya is arbitrary and unconstitutional.

7.3 The observations made by the Hon'ble Supreme Court in the case of Kum Madhuri Patil (Supra) were not applicable to the facts of the present case for various reasons.

In the first place, the observations of the Hon'ble Supreme Court were made with reference to a Hindu caste unlike Muslim communities where there is no caste system and most of the Muslim communities are known by their occupations. Since the petitioners' ancestors including the petitioners' grandparents were engaged in the occupation of weaving before 1.4.1978, the petitioners were Muslim Julayas as Julaya means weavers.

The observations made by the Hon'ble Supreme Court regarding any fraudulent attempts to obtain caste certificates to get the OBC status cannot be applied to the petitioners or their parents who had not committed any fraud whatsoever and they were legitimately issued Muslim Julaya caste certificate by the District Social Welfare Officer, Palanpur. In the past, the persons from the petitioners' community have obtained admissions to seats reserved for SEBCs or have been appointed to public services on the strength of reservation for SEBCs.

7.4 Reliance has been placed on the decision of the Apex Court in Gayatrilaxmi Bapurao Nagpure vs. State of Maharashtra, (1996) 3 SCC 685 in support of the contention that the authorities are also required to render assistance for taking decisions in such matters.

8. On the other hand, Mr Dipen A Desai, learned Assistant Government Pleader for the respondent-authorities has submitted as under :-

8.1 Since Julaya Muslim community was included in the list of SEBC in the year 1978, the petitioners were required to produce documents for a period prior to 1978 to prove that they belong to the community of Muslim Julayas. The documents after the year 1978 cannot be creditworthy or carry any weight so as to prove the caste of the petitioners.

8.2 There are School Leaving Certificates issued prior to 1978 wherein the caste is shown as Muslim Julayas, but those certificates pertain to the parents of the students from Jamnagar and Junagadh Districts where Muslim Julaya community people are residing. Even the Baxi Commission has referred to the other names of the Julaya communities by indicating that they are known as Julayas, Garana, Taria and Pari (all Muslim), but nowhere has the Baxi Panch referred to Jalayas as Momins.

8.3 The petitioners have not produced any documents to show that Momins of Kanodar village were ever known as Julahas or Julayas. On the contrary, the very fact that Momins of Kanodar village have represented before the OBC Commission to get their names included in the list of SEBC (page 117) shows that the Momins of Kanodar village are aware that they are not Muslim Julayas.

8.4 Heavy reliance is placed on the decision of the Apex Court in State of Maharashtra vs. Milind & Ors., AIR 2001 SC 393 in support of the contention that once pursuant to the report of the Commission for OBCs, the Government has published the list of Socially & Educationally Backward Classes, it is not open to any authority, much less for the Court, to hold community "B" (a community not specifically mentioned in the list of SEBCs) as synonymous to community "A" mentioned in the list of SEBCs and that it is not open to the State Governments or Courts or Tribunals or any other authority to modify, amend or alter the list of SEBCs, just as such a list of Scheduled Tribes specified in the notification issued under Article 342 cannot be modified, amended or altered. It is not at all permissible to hold any inquiry or let in any evidence for the above purposes.

8.5 Strong reliance has also been placed on the decisions of the Apex Court in Kum. Madhuri Patil vs. State of Maharashtra, AIR 1995 SC 94 and Indra Sawhney

vs. Union of India, AIR 1993 SC 474 (pg. 579-Para 117) and of a learned Single Judge of this Court in Special Civil Application No.12847 of 2003 (Asif Shaukat Hussainbhai Kadiwala vs. State of Gujarat) decided on 2.9.2003.

9. Having heard the learned counsel for the parties, the Court has given anxious and thoughtful consideration to the rival submissions. At the outset, it is necessary to deal with two preliminary contentions - the contention of Dr Sinha for the petitioners that the Director has no authority or jurisdiction to cancel the certificates issued by the District Social Welfare Officer, Palanpur and the submission of the learned AGP that it is not open to any authority or Court to hold an inquiry that community "B" is not a part of or synonymous to community "A" included in the list of SEBCs.

10. It appears to the Court from the decision of the Apex Court in Kum. Madhuri Patil vs. State of Maharashtra (Supra) that the Apex Court itself has required the authorities to review the certificates issued in favour of persons claiming to be belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes. But before elaborating further, the relevant constitutional provisions need to be referred to.

Article 15 which prohibits discrimination on grounds of religion, race, caste, sex or place of birth itself provides in Clause (4) thereof that nothing in Article 15 or Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Similarly, Article 16 providing for equality of opportunity in matters of public employment provides in Clause (4) thereof that nothing in the Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Part XVI of the Constitution contains special provisions relating to certain castes. Articles 330 to 334 provide for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States. Article 335 provides for claims of Scheduled Castes and Scheduled Tribes to be considered for appointment to services and posts in connection with the affairs of the Union or of a State. Articles 336 and 337 contain special provisions for Anglo-Indian community. Article 338 provides for

constitution of a National Commission for Scheduled Castes and Scheduled Tribes for the purposes indicated in Clause (5) of the said Articles. Articles 340, 341 and 342 read as under :-

"340. Appointment of a Commission to investigate the conditions of backward classes.- (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

341. Scheduled Castes.- (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes.- (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or groups within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

(emphasis supplied)

11. An analysis of the aforesaid Articles makes it clear that in case of Scheduled Castes and Scheduled Tribes it is the President who, after consultation with the Governor of a State, by public notification specifies the castes, races or tribes/tribal communities or parts of or groups within castes, races or tribes/tribal communities which shall be deemed to be Scheduled Castes or Scheduled Tribes (as the case may be) in relation to that State and the Parliament is empowered to make any inclusion in or exclusion from such list, but save as aforesaid, a notification issued under clause (1) of Article 341 or clause (1) of Article 342 shall not be varied by any subsequent notification. Absence of such language in the provisions of Article 340 clearly highlights the contrast between the lists of Scheduled Castes/Scheduled Tribes notified by the President (which can only be altered by the Parliament) on the one hand and the list of Other Backward Classes on the other hand. Under Article 340(1), the President merely appoints a Commission -

(i) to investigate the conditions of socially and educationally backward classes within the territory of India;

(ii) to investigate the difficulties under which they labour;

(iii) to make recommendations as to the steps that should be taken by the Union or any

State to remove such difficulties; and to improve their condition; and

(iv) to make recommendations as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made.

Such a Commission is to investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper. Thereafter, the President is to cause a copy of the report so presented together with a memorandum explaining the action taken thereon and the report is to be laid before each House of Parliament.

12. Article 340 does not provide or contemplate that the Government of the State for which a Commission for Socially and Educationally Backward Classes has been constituted cannot clarify or amplify the list of SEBC already notified by the Commission. The contrast between the language employed in Articles 341 and 342 on the one hand and the one employed in Article 340 on the other hand is too obvious to be ignored. In fact, Article 340 itself does not provide that no authority other than the Commission constituted under Article 340 can identify the SEBCs nor does it specify the authority/body which is to identify the SEBCs.

Of course, reference has to be made to the following observations made by the Hon'ble Supreme Court in Indra Sawhney vs. Union of India, AIR 1993 SC 477 regarding desirability of a permanent statutory body to examine complaints of over-inclusion/under inclusion :-

"Desirability of a permanent statutory body to examine complaints of over-inclusion/under inclusion.

117. We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong including or non-inclusion of groups, classes and sections in the lists of Other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon

> the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be included among the other backward classes, such matter must also be referred to the said body in the first instance and action taken on the basis of its recommendation. The body must be composed of experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirably that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under clause (4) of Art. 16 itself - or under Art. 16(4) read with Article 340 - as a concomitant of the power to identify and specify backward class of citizens, in whose favour reservations are to be provided. We direct that such a body be constituted both at Central level and at the level of the States within four months from today. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of O.B.Cs. As suggested by Chandrachud, CJ in Vasant Kumar (AIR 1985 SC 1495), there should be a periodic revision of these lists to exclude those who have ceased to be backward or for inclusion of new classes, as the case may be."

Even proceeding on the basis that Article 340 read with the observations made by the Hon'ble Supreme Court in para 117 of the judgment in Indra Sawhney's case contemplate that the Commission is to identify the SEBCs within each State, there is nothing in the provisions of Article 340 or in the decision in the case of Indra Sawhney or in the State of Maharashtra vs. Milind (Supra) to take away the powers of the State Government under Article 15(4) of the Constitution to make any special provision for the advancement of any socially and educationally backward classes of citizens. Unlike Articles 341 and 342, Article 340 does not provide as to which community shall, for the purposes of this Constitution (including Article 15(4)), be deemed to be a

socially and educationally backward class, nor does Article 340 provide that it is only the Parliament or State Legislature which can make inclusion in or exclusion from the list of SEBCs. Even so, in view of the observations made by the Apex Court in para 117 of the said case, while it would be legitimate for the State Government to entrust the work of identification of SEBCs to a Commission constituted under Article 340 of the Constitution, the State Government cannot decline to look into any representation from any community to the effect that the community is already covered by the list of SEBCs or that that particular community "B" is synonymous to the community "A" already included in the list of SEBCs.

13. Once this power is recognized in the State Government, just as it is open to the State Government to delegate to the District Social Welfare Officer the power to issue certificate in favour of an individual claiming the status of a Socially and Educationally Backward Class, it is equally open to the Government to cancel the certificate issued by the District Social Welfare Officer. The power to issue a certificate also includes the power to cancel the certificate as provided in Section 21 of the General Clauses Act 1897 and Section 21 of the Bombay General Clauses Act, 1904. But the principles of natural justice have to be followed before taking any decision regarding cancellation of such certificate. This discussion, therefore, answers both the preliminary contentions - the one raised by Dr Sinha for the petitioners challenging the review exercise undertaken by the Director and the challenge is negatived and so also the submission made by the learned AGP against any inquiry being held, whether the caste or community in question is included in the list of SEBCs or not.

14. Dr Mukul Sinha for the petitioners has relied on the decision of the Apex Court in Gayatrilaxmi Bapurao Nagpure vs. State of Maharashtra, (1996) 3 SCC 685 and particularly the following observations :-

> "Undoubtedly, in cases of this type (regarding issuance of caste certificate for the purposes of obtaining the benefits of reservation), the burden heavily lies on the applicant who seeks such a certificate. That does not mean that the authorities have no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. We are of the view that the authorities concerned must also play a

role in assisting the Committee to arrive at a correct decision."

On the other hand, Mr Desai, learned AGP has relied on the decision of a learned Single Judge of this Court in Special Civil Application No.12847 of 2003 (Asif Shaukat Hussainbhai Kadiwala vs. State of Gujarat) decided on 2.9.2003, wherein the Court was dealing with cancellation of a certificate for "Sunni Patni Jamat". The learned Single Judge observed in the above decision that while exercising jurisdiction under Article 226, the Court would not be exercising the power of the Court of appeal, but the power of judicial review will be very limited.

There can be no controversy that in such matters, the Courts would not sit in appeal over the jurisdiction of the authority cancelling the caste certificate issued by the lower authority. Even so, the Court will consider whether the higher authority has committed any error apparent on the face of the record. If the Court finds that the authority has exercised its jurisdiction on the basis of the irrelevant considerations or has not taken into consideration the relevant factors or if the authority has not carefully appreciated the relevant constitutional provisions or adequate opportunity to lead evidence or adequate opportunity of hearing was not afforded to the person before cancellation of the caste certificate, the Court would be justified in interfering with the decision of the authority.

15. Coming to the merits of the controversy, it is true that the Director has relied solely on the decision of the Apex Court in Kum. Madhuri Patil's case (Supra) for the purpose of applying the test as to what would be the best possible evidence to issue a certificate of a socially and educationally backward class. While mention of Muslim Julaya community in a School Leaving Certificate issued before 1.4.1978 (i.e. in the case of the father of a student claiming such status) may be the best possible evidence, it does not mean that the students or their parents are not to be permitted to lead any other evidence in support of their claim that they belong to a Socially and Educationally Backward Class. Even in the case of Asif Shaukat Hussainbhai Kadiwala vs. State of Gujarat (Supra), this Court after observing that it will be the record of parents, which would carry the greatest probative evidentiary value for the purpose of conferring the status upon the person, but it cannot be said that "if there is no evidence at all of the caste or school record of the parents, a person cannot be

conferred the status under any circumstance. In absence of such record, the authority will have to examine the case with more care and caution and it will be for the person concerned to show any other authenticated or reliable material which can throw light upon the caste of the parents at the time when the policy came to be declared."

The aforesaid observations of the Hon'ble Supreme Court in Kum. Madhuri Patil vs. State of Maharashtra (Supra) or the aforesaid observations made by the learned Single Judge of this Court in the in the case of Asif Shaukat Hussainbhai Kadiwala vs. State of Gujarat (Supra), do not detract from the fact that if the persons defending the caste certificates can show relevant or reliable material in support of their claim of belonging to a particular community, the same has to be considered. No doubt, the documents after declaration of the policy or publication of the SEBC lists are required to be examined with much more care and caution, but that does not necessarily mean that those documents need to be viewed with outright prejudice.

The petitioners have relied upon several reports, research materials and documents indicating that the petitioners hail from the community of weavers and that their grandparents were engaged in the occupation of weaving such as the share certificate issued by the Kanodar Weavers Co-operative Industrial Society Ltd. in 1958 (SCA No.15578/03). The petitioners also contend that the term "Julaya" means "weaver" and that because the Muslim weavers in Kanodar village in Banaskantha District in North Gujarat only speak Gujarati language and not Urdu language and that culturally also they are similar to Hindus and, therefore, they did not use the Urdu word "Julaya" to describe their occupation or their community and that the term "Julaya" is prevalent only amongst those Muslim weavers who speak Urdu language such as Muslim weavers in Junagadh and Jamnagar Districts.

All the submissions made by the petitioners before the Director were required to be considered independently without being obsessed by only one fact whether the School Leaving Certificates of the petitioners' fathers mentioned their caste as Muslim Julaya or not. The Director has erred in declining to exercise the jurisdiction vested in him for considering whether the Muslim weavers in Kanodar could be considered as Muslim Julayas or not. The Director has proceeded on the basis as if it was not open to the Director to permit any evidence to be led to show whether community "B" was

synonymous to community "A" included in the list of SEBCs. As already discussed earlier, the embargo placed by the provisions of Clause (2) in Article 341 and Clause (2) in Article 342 does not apply to the list of SEBCs. Hence, the principles laid down by the Hon'ble Supreme Court in State of Maharashtra vs. Milind (Supra) would not apply to a community contending that their community is synonymous to a community included in the list of SEBCs. This is, however, not to hold that simply by showing that a community is engaged in the same occupation included in the list of SEBCs, it is entitled to be declared as a Socially and Educationally Backward Class. The Government would be required to examine the claim of a community with reference to its social and educational status before identifying or equating a community as a socially and educationally backward class. All this exercise would involve inquiry into various factual aspects and, therefore, this Court would not undertake such an exercise while hearing a petition under Article 226 of the Constitution.

16. It, therefore, appears to the Court that this is a fit case where the impugned orders passed by the Director on 25.9.2003 deserve to be quashed and set aside and the matter deserves to be remanded to respondent Nos. 1 and 2 for holding a fresh inquiry and to decide whether the petitioners belong to "Muslim Julaya" community which is already declared as a Socially and Educationally Backward Class or whether the community of Muslim weavers in Kanodar village constitute a Socially and Educationally Backward Class. For this purpose, it will be open to the respondent authorities to take into consideration the views of the Commission for Other Backward Classes constituted under Article 340 of the Constitution.

17. While the Court does not express any opinion on merits of the controversy, the Court cannot help observing that the Director seems to have carried the matter a little too far in suggesting that the petitioners had played any fraud in obtaining the certificates from the District Social Welfare Officer, Palanpur about their caste. This was not the case where an individual was claiming to belong to a community other than the community to which he belonged. Here was an attempt of the entire community of Muslims in Kanodar village claiming that their ancestors were engaged in the occupation of weaving for many decades and that they were belonging to the community of Muslim weavers, the term "Julaya" means weaver and, therefore, they were covered by the term "Muslim Julayas" which is one of the

communities in the list of SEBCs.

The observations made by the Hon'ble Supreme Court in the case of Kum. Madhuri Patil (Supra) were made with reference to an individual who was shown as a Hindu Koli in school leaving certificate issued in 1943 and whose daughter claimed to be "Mahadev Koli" which was declared as a Scheduled Tribe in 1933. The verification committee found that the petitioner and her father belonged to Hindu Koli community which was an Other Backward Class, but not a Scheduled Tribe.

In the facts of the present group of petitions, there is no finding that the documents produced by the petitioners before the Director were manipulated or fabricated. It is the case of the petitioners that after "Muslim Julayas" were recognized as SEBC and after realizing that Julayas are weavers and that the petitioners hail from the community of Muslim weavers in Kanodar village and, and, therefore, they were entitled to be treated as Muslim Julayas, the petitioners approached the District Social Welfare Officer, Palanpur and they were granted certificates of Muslim Julayas by the District Social Welfare Officer, Palanpur after proper verification. This was a case where the entire community was claiming the status of SEBC, in the first place, by showing themselves as Muslim Julayas and when their claims were not accepted by the Director, they requested the Commission for Other Backward Classes to accept their claim for being treated as an SEBC. The Court is, therefore, of the view that on merits, their claim may be accepted or may not be accepted after considering whether they are a part of Muslim Julayas recognized as an SEBC or after applying all the relevant criteria for declaring a community as an SEBC, but it cannot be said that the petitioners have played any fraud with the authorities which is the innuendo conveyed by the Director althoroughout the impugned orders.

18. As far as the petitioners' claims for admission to the seats reserved for SEBCs for the year 2003-04 are concerned, obviously now it is too late to give any directions because in the first place the Court has merely quashed the orders of the Director for a fresh inquiry without any declaration in favour of the petitioners and secondly, the admission process for the medical and engineering colleges and other professional courses was already over even before the petitions were filed. In any case, the respondent authorities are expected to decide the matter afresh and if the petitioners cooperate, the respondents shall decide the

matter as expeditiously as possible and in any case by 31st May, 2004 so that in case the petitioners are ultimately found to be belonging to a Socially and Educationally Backward Class, their claim can be considered for admission to various courses for the academic year 2004-05.

19. Accordingly, the petitions are partly allowed. The impugned orders dated 25.9.2003 at Annexure "A" to the petitions issued by the Director of Developing Castes Welfare Department are hereby quashed and set aside. The respondents shall give a reasonable opportunity to the petitioners to lead such other and further evidence as they may desire to adduce and to make such other and further representations as they may desire within one month from today and the respondents shall also give the petitioners or their representatives an opportunity of personal hearing. Thereafter the respondents, particularly, respondent Nos. 1 and 2 shall decide by 31st May, 2004 whether the petitioners belong to the community of "Muslim Julayas" or whether they belong to any Socially and Educationally Backward Class for the purposes of Article 15(4) and Article 16(4), in accordance with law and in light of the observations made by the Apex Court in para 18 of the decision in Gayatrilaxmi Bapurao Nagpure vs. State of Maharashtra, 1996 (3) SCC 685 which are already quoted in para 14 of this judgment and in light of the other observations made in this judgment.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-